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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,581	01/27/2004	Akio Uchiyama	17406	3837
23389 7590 09/11/2008 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
KASZTEJNA, MATTHEW JOHN				
ART UNIT		PAPER NUMBER		
3739				
MAIL DATE		DELIVERY MODE		
09/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/766,581

**Applicant(s)**

UCHIYAMA, AKIO

**Examiner**

MATTHEW J. KASZTEJNA

**Art Unit**

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 47-59 is/are pending in the application.  
4a) Of the above claim(s) 60-63 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 47-59 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date 5/7/8, 4/7/8  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 60-63 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 11, 2008.

Applicant's election without traverse of Group I claims 47-59 in the reply filed on August 11, 2008 is acknowledged.

### ***Notice of Amendment***

In response to the amendment filed on May 7, 2008, new claims 47-59 and are acknowledged. The following reiterated grounds of rejection are set forth:

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 47-59 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0139661 to Kimchy et al.

**In regard to claims 47 and 53**, Kimchy et al. disclose a medical apparatus 20 adapted for use with a capsulated medical device 12 having an imager for obtaining an image (see paragraph 0340) and an external reception system 18 placed outside of a body for receiving data of the image, the medical apparatus being operable with the

external reception system (see Fig. 1a) and comprising: a communication section 46 through which the external reception system is connected (see paragraph 0338) and the data of the image is transmitted from the external reception system, the external reception system receiving data, via receiver 40, of the image wirelessly transmitted from the capsulated medical device through an antenna 54 and storing the received data of the image in a storage section 36 (see paragraph 0363); a display section (not labeled, but seen in Figure 1B) which at least temporarily displays the image transmitted from the external reception system; and a drive power supply section including a battery for supplying a driving power to at least the communication section (see paragraph 0038). Kimchy et al. teach wherein the computer station 20 may be a personal computer, a minicomputer, a laptop, or the like. If a laptop is implemented in a system, then the drive power supply section would inherently include a battery for powering the system as is well known in the art. Furthermore, **in regard to claims 49 and 57**, it is well known in the art and is inherent that all personal computers include electric circuits adapted to generate direct-current voltage from AC power supply.

**In regard to claims 48 and 54**, Kimchy et al. disclose a medical apparatus, wherein the image comprises plurality of images and, when the medical apparatus is connected to the external reception system (see paragraph 0338), the display section displays at least some of the images which are stored in the external reception system (see paragraphs 0341-0342). Furthermore, Kimchy teach of numerous embodiments wherein a diagnostic image may comprise diagnostic information (nuclear radiation, optical fluorescence, infrared radiation etc.) as a function of time as seen in Fig 3a or

diagnostic information as a function of distance traveled by the capsule 12, based on information see in Fig 3d.

**In regard to claims 50 and 55**, Kimchy et al. disclose a medical apparatus, wherein the display section displays the image to allow a user to monitor a status on an operation of the capsulated medical device (see Figs. 3a-d and paragraph 0363).

**In regard to claims 51 and 56**, Kimchy et al. disclose a medical apparatus, wherein the status on the operation includes an image capturing status by the imager (see paragraph 0366).

**In regard to claims 52 and 59**, Kimchy et al. disclose a medical apparatus, wherein the image is displayed on the display section while the data thereof is stored in the storage section (see paragraphs 0341-0342).

**In regard to claim 58**, Kimchy et al. disclose a medical apparatus, wherein the information includes information related to an image capturing operation performed by the imager (see Fig. 3d and paragraph 0373).

### ***Response to Arguments***

Applicant's arguments filed May 7, 2008 have been fully considered but they are not persuasive.

Applicant states that Kimchy et al. fails to teach that the data of the image is transmitted from the external reception system to the medical apparatus. Examiner disagrees. One of the main objectives of the apparatus of Kimchy is providing an apparatus having a data-handling apparatus 18 (i.e. external reception system), in

signal communication with the probe 12 (i.e. capsulated medical device) *for receiving and handling image data*, generated by the probe (see paragraph 0089). Kimchy et al. further disclose that computer station 20 (i.e. medical apparatus) may be a Personal Computer, a minicomputer a laptop, or the like. Preferably, computer station 20 includes a data reading implement 44, compatible with removable data-storage implement 38 of apparatus 18. Additionally, computer station 20 may include a receiver 46 or a transmitter and receiver system 46, for communicating with transmitter and receiver system 42 of apparatus 18, or with ingestible device 12 (see paragraph 0338). Thus the computer 20 receives image data from the apparatus 18 for display thereof (see Figs. 1a-b). As broadly as claimed, Kimchy et al. meet the limitations of the recited claims.

Applicant states that Kimchy et al. fails to teach that the data of the image is stored in the external reception system. Examiner disagrees. Kimchy et al. disclose multiple embodiments all disclosing a data-handling apparatus that is used *for receiving and handling* (i.e. storing) imaging data. Ingestible device 12 includes data-handling apparatus 53, in signal communication with probe 50, arranged for receiving and handling imaging data generated by probe 50. Data-handling apparatus 53 may be, for example, a transmitter 54, arranged to transmit data, sensed by probe 50, to at least one receiver 40 of extracorporeal apparatus 18 (FIG. 1C), or directly to receiver 46 of computer station 20. Transmitter 54 may also transmit a periodic reference signal, which may include identifying details of body 16 and the date and (or) time of the diagnosis (see paragraph 0341-0342). Thus, it is clear that the main objective of the

external apparatus 18 of Kimchy is to store image data received from capsule 12. The storage is disclosed in detail further by Kimchy in that external apparatus 18 includes computer means 30 (see Fig. 1c). Computer means 30 (FIG. 1C) records the data as the number of counts during a predetermined time interval, or time channel, for all the time intervals, from the time of ingestion. The predetermined time intervals may be, for example, 30 seconds, 1 minute, or 10 minutes, or another predetermined value, and may depend on the expected count rate. For example, if ingestible device 12 takes 70 hours (=4200 minutes) to travel the length of gastrointestinal tract 14, computer means 30 may collect the data in 4200 channels of 1-minute intervals, or in 420 channels of 10-minute intervals, or in any other number of channels that is predetermined. Data manipulation may later coalesce channels to aid in interpretation. For example, data may be collected and stored in very fine channels of, for example, 1 second, and later coalesced and displayed in channels of 10 minutes (see paragraph 0363). As broadly as claimed, Kimchy et al. meet the limitations of the recited claims.

Applicant states that Kimchy et al. fails to teach that the display section of the medial apparatus displays the image received by the external apparatus. Examiner disagrees. Kimchy teach of numerous embodiments wherein a diagnostic image may comprise diagnostic information (nuclear radiation, optical fluorescence, infrared radiation etc.) as a function of time as seen in Fig 3a or diagnostic information as a function of distance traveled by the capsule 12, based on information see in Fig 3d. A plurality of images can thus be produced based on the information most desired and considered most relevant to the user. (It is noted, that as broadly as claimed, a graph

similar to those seen in Figures 3b-d, 4b-d, 8b and 9b, constitute an image.) The main objective of the system of Kimchy et al. is to provide an ingestible device to travel in the gastrointestinal tract and perform a diagnostic image of the tissue therein (see paragraph 0316). This image is displayed via computer means 20 as previously stated. Not displaying the image would defeat the purpose of the system as a whole. As broadly as claimed, Kimchy et al. meet the limitations of the recited claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. KASZTEJNA whose telephone number is (571)272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J. K./  
Examiner, Art Unit 3739

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